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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 197

GEORGE MARSHALL, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

No. 236

RICHARD MORFORD, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

No. 248

JOHN HOWARD LAWSON, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

No. 249

DALTON TRUMBO, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

No. 766

EDWARD K. BARSKY, *et al., Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF

Statement

The Civil Rights Congress (hereinafter called the Congress) respectfully moves for leave to file a brief amicus curiae in support of the petitions for certiorari herein and in support of the petition for rehearing in the *Barsky Case*. Consent to such filing has been given by counsel for petitioners in all the cases and by counsel for the Government.

The Civil Rights Congress, as its name indicates, is an organization devoted to the protection, extension, and strengthening of civil rights in this country. It has chapters in all parts of the United States, including all of the principal cities. The constitution of the Congress provides that in order to achieve its major objective, the Congress will engage in efforts along the following lines:

> "To strive constantly to safeguard and extend all democratic rights, especially the rights of labor, and of racial, political, religious and national minorities;
>
> "To combat all forms of discrimination against these groups;
>
> "To defend and aid victims of the fight for these groups;
>
> "To fight against domestic fascism and all of its forms—jim crow, anti-Semitism, red-baiting, discrimination against the foreign born.
>
> "To these ends the Civil Rights Congress dedicates itself—
>
> "To educate, mobilize, and help coordinate the efforts of the democratic forces of America in the defense and advancement of their civil rights and democratic rights;
>
> "To promote the unity of all groups and individuals dedicated to the defeat of fascism in all its forms."

The petitions in these cases raise fundamental constitutional and other issues concerning the creation and functioning of the Un-American Activities Committee of the House of Representatives (hereinafter called the Commit-

tee). Because the Congress regards the Committee as a profound and pervasive menace to the civil liberties of the American people, the Congress believes that the filing of this brief is not only consistent with its purposes but is also a responsibility it owes to the continuance of the American democratic tradition.

No governmental agency in the history of our country has done as much to undermine our basic liberties as has the Un-American Activities Committee and its predecessors. For more than a decade, this Committee has roamed at large in areas which the Constitution forbids to any agency of government. The Committee has trampled on free speech and utterance. The Committee has interfered on a large scale with freedom of assembly and freedom of association. The Committee has employed as a guiding principle the doctrine of "guilt by association" which this Court has condemned as violative of our traditions (*Schneiderman* v. *U. S.*, 320 U. S. 118, 136). The Committee has inhibited freedom of thought and has drastically choked off the free discussion of political issues which the Constitution seeks to encourage and which is more than ever necessary in a period when fateful issues confront the American people. The Committee has interfered in political elections and in the legitimate activities of labor organizations. The Committee has attacked and denounced common citizens, public officials, Cabinet members, and the President of the United States merely because their notions of sound public policy differed from the Committee's.

The Committee, though an arm of the legislature, does not concern itself really with legislation. Instead, the Committee acts as if it has been given a mandate to pass judgment on political, social, and economic ideas, and to indict and convict as "disloyal" or "subversive" or "un-American" any person whose ideas or affiliations it disapproves. The Committee has sought to punish, in one way or another, those it has found "guilty". The Committee has slandered and libeled and held up to public contempt and obloquy countless persons and organizations which have refused to accept its standards of orthodoxy.

In all these activities, the Committee has never felt itself bound by accepted rules of procedure or by standards of fair play which are the essence of due process, and has issued reports and statements on a wholesale scale without giving its victims the opportunity to be heard or the opportunity to test, by cross-examination or otherwise, the accuracy or truthfulness of its informants and witnesses.

The people of the United States are today faced with the most extensive and violent onslaught ever made on their civil liberties. Encouraged by the apparent success of a committee of the Congress in this field, several states have set up committees which have employed methods similar to those employed by their federal progenitor, with similar results and effects. The preoccupation with "loyalty" which the Committee has stimulated has generated widespread efforts by the Federal Government, by state and local governments, and by other private and public constitutions, to separate the "loyal" from the "disloyal", and to impose "loyalty" oaths and affidavits. The result has been an unprecedented interference with freedom of speech, thought, assembly, and association.

The Federal Government's loyalty program, and the Attorney-General's list of proscribed organizations which is part of that program, has given the full sanction of the Executive Department to the Committee's notion that government has the power to tell the people to what organizations they may or may not belong, what thoughts they may or may not think, what words they may or may not utter, what meetings they may or may not attend.

This blantant trampling by government on the most fundamental of constitutional and human rights has had fearful results. The encouragement given to truly undemocratic forces by these policies has already eventuated in widespread interference with freedom of assembly and in vicious and violent physical attacks on peaceful meetings of citizens. The private and public educational institutions and systems in the country are in constant agitation as authorities seek to impose "loyalty" tests and

other implements of orthodoxy while teachers struggle to resist them, so that while it is generally agreed that the deterioration of the country's educational plant has reached emergency proportions and that a common effort must be made to solve common problems, our educational institutions are rent by violent dissension and educational leaders become more and more alarmed.* The channels of political discussion have been so poisoned that debate turns less and less on issues and more and more on imputations of disloyalty, so that no man, no matter how brilliant his record of public service, is free of such imputations as long as he dares advocate social, political, or economic reform.

It is for these reasons and for many others which limitations of space prevent us from detailing, but which are set forth in the petitions and briefs in the five cases, that we say that the Committee is a profound and pervasive menace to the liberties of the people. It is for these reasons that we believe that this Court has no more solemn responsibility than that of passing on the merits of the serious issues presented by the petitions in these cases.

This Court has said that:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein" (*Board of Education* v. *Barnette,* 319 U. S. 624, 642).

The Court has vindicated this principle in many other cases as well as in the *Barnette Case.* It is difficult for us to imagine any cases which more clearly call for its further vindication than these five cases. The Un-American

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* "The Educational Policies Committee, whose membership includes Gen. Dwight D. Eisenhower, president of Columbia University, and James B. Conant, head of Harvard University, declared last night that state laws requiring special loyalty oaths of teachers were a menace to educational freedom" ("Educators Warn on Loyalty Oaths", N. Y. Times, Oct. 9, 1949, p. 1).

Activities Committee of the House of Representatives *does* prescribe what shall be orthodox in politics, nationalism, and other matters of opinion. The Un-American Activities Committee of the House of Representatives *does* force citizens to confess by word or act their faith therein. We respectfully urge the Court to assert once more that the Constitution is supreme over such tyranny.

Argument

Although each of the five petitions presents different issues which concern the Civil Rights Congress, the constitutional issue under the First and Fifth Amendments is common to all the cases and this brief therefore will deal with that issue. In addition, the issue concerning the nature of the evidence required by the Committee in its subpoenas and in its questions to witnesses raises a basic issue of civil rights, and involves the First, Fourth, and Fifth Amendments and Article I, Section 10 of the Constitution.

I

The Resolution creating the Committee is unconstitutional on its face and as applied.

The Resolution creating the Committee authorizes it to investigate "un-American propaganda activities" and "subversive and un-American propaganda" that "attacks the principle of the form of government as guaranteed by our Constitution" (Legislative Reorganization Act of 1946, Sec. 121(b), 60 Stat. 828).

No one would dispute the proposition that a regulatory or penal statute would be unconstitutional on its face if it embodied the words and phrases contained in the Resolution (*Stromberg* v. *California,* 283 U. S. 359; *Herndon* v. *Lowry,* 301 U. S. 242; *Lanzetta* v. *New Jersey,* 306 U. S. 451; *Thornhill* v. *Alabama,* 310 U. S. 88; *Winters* v. *New*

York, 333 U. S. 507). In fact, as we understand the argument of the Government and the reasoning of the Court of Appeals in the five cases, it is conceded that such a regulatory or penal statute would be unconstitutional as an interference with the rights guaranteed under the First Amendment and as being too vague and indefinite under the due process clause of the Fifth Amendment. But, says the Court of Appeals, since these cases concern not a regulatory or penal statute, not the power of Congress to legislate but the power of Congress to investigate to determine whether it should legislate, the First and Fifth Amendments are not applicable. Typical of this attitude of the Court of Appeals is the statement in its opinion in the *Barsky Case*, 167 F. (2d) 241, that the precedents we have cited and similar cases "dealt with statutes which actually imposed a restriction upon speech or publication" (246). But, argues the Court, here is not such a statute but a resolution which authorizes investigation into "threats to the existing form of government by extra-constitutional processes of change" (id.).

It is submitted that the Court of Appeals is guilty of a shocking misconception of the great constitutional guarantees and that unless that misconception is corrected such a gap will have been torn in the First Amendment as to make it only a question of time until our liberties run out entirely. The Amendment says that "Congress shall make no law * * * abridging the freedom of speech * * *." The Court of Appeals says that this means that Congress "shall make no penal or regulatory law * * * abridging the freedom of speech * * *" and that therefore Congress may pass a "resolution" which does not regulate or penalize but which permits investigation even if free speech is abridged.

The cases in this Court permit no such construction of the First Amendment. To the contrary, this Court has found again and again that the First Amendment forbids impairment of the right to speak no matter in what manner or in the exercise of what granted or reserved power

the impairment is attempted (*Meyer* v. *Nebraska,* 262 U. S. 390; *Stromberg* v. *California,* 283 U. S. 359; *Lovell* v. *Griffin,* 303 U. S. 444; *Bridges* v. *California,* 314 U. S. 252; *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624; *United States* v. *Ballard,* 322 U. S. 78; *Thomas* v. *Collins,* 323 U. S. 516; *Hannegan* v. *Esquire,* 327 U. S. 146; *Knauer* v. *United States,* 328 U. S. 654).

The cited cases involve highly diverse Federal and State powers and varying forms of direct and indirect interference. Uniformly this Court in absolute terms has vindicated the untrammelled right to speak.* All of the expressions of the Court are consistent with the ringing affirmation in the *Barnette Case* that the First Amendment does not permit Government to separate the orthodox idea from the unorthodox, to distinguish "good" ideas from "bad", to forbid some utterances and permit others, to approve propaganda which is not "subversive" and disapprove propaganda which is. In *Hannegan* v. *Esquire,* the Court said that it would be "a radical departure from our traditions" if Congress "undertook to clothe the Postmaster General with the power to supervise the tastes of the reading public of the country" (327 U. S. 146, 156). In the *Stromberg Case,* the Court said that: "The maintenance of the opportunity for free political discussion * * * is a fundamental principle of our constitutional system" (283 U. S. 359, 369). In the *Knauer Case,* the Court said that any effort to punish opinions "runs counter to our traditions" (328 U. S. 654, 658). Any interference or burden on "the dissemination of ideas" is unconstitutional, said the Court in the *Thornhill Case* (310 U. S. 88, 97). This fundamental tenet has had this exposition from Mr. Justice Jackson, concurring in *Thomas* v. *Collins:*

> "But it cannot be the duty, because it is not the right, of the state to protect the public against false

* It is apparently conceded that neither the Resolution nor the Committee's actions thereunder can be justified under the "clear and present danger" test (*Schenck* v. *United States,* 249 U. S. 47). Any such justification would be palpably ridiculous.

doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us" (323 U. S. 516, 545).

The assumption in the opinions of the Court of Appeals that although it may be true that the First Amendment limits all other legislative powers, it does not limit the power to investigate, is a false assumption. As we have shown, the First Amendment allows *no* exception. The power to investigate is a power incidental to the power to legislate. If legislation may not abridge fundamental rights, then neither may investigation. Investigation must bear some reasonable relation to prospective legislation, and if Congress may not legislate on a subject it may not investigate it (*Kilbourn* v. *Thompson,* 103 U. S. 168).* As we have said, it cannot be argued and it is not argued, that Congress has the power to legislate that "subversive and un-American propaganda", for example, may be punished or regulated. By the same token, Congress has no power to investigate "subversive and un-American propaganda."

Since, as we have said, it has been conceded that a penal or regulatory statute embodying the standards of the Resolution would be unconstitutional, it is scarcely necessary to argue the point except to note that standards considerably more definite and unambiguous than these

* The Committee has in a sense confessed its powerlessness to recommend legislation in this field. After a decade of sensational headliness announcing the imminent crumbling of the pillars of the Republic, the Committee has not given birth to a single piece of valid legislation (94 Cong. Rec. 2495 (1948); Note, 96 U. of Pen. Law Review, 381, 396 (1948)). In fact, the only statute which has emanated from the endeavors of the Committee, at least indirectly, was found to violate the provision against bills of attainder (*United States* v. *Lovett,* 328 U. S. 303).

have been found to violate the First and Fifth Amendments (*Herndon* v. *Lowry,* supra, and *Lanzetta* v. *New Jersey,* supra). However, since we argue that even if the Resolution could conceivably be sustained on its face, it has been unconstitutionally applied, we pause at the outset of that part of the argument to point out how vague, uncertain, and ambiguous the standards are. It will then be clear that such standards could not possibly be applied in a constitutional manner.

There is of course no authoritative definition of "un-American" or "subversive" or of "the principle of the form of government as guaranteed by the Constitution." It is generally recognized by rational Americans, no matter what their own beliefs are otherwise, that the term "un-American" or "subversive" is a term of opprobrium which means only that the speaker does not approve the person or subject to whom the term is applied. As the Court put it in *Feinglass* v. *Reinecke,* 48 F. Supp. 438: "Any political idea that happens to conflict with the economic or political notions of an individual is apt by him to be deemed un-American" (at 441).

Nor is there any more authoritative exposition of "the principle of the form of government as guaranteed by the Constitution." There is of course no *one* principle embodied in the Constitution but it is our own conviction that if it were necessary to select one principle which most nearly expresses the essence of our constitutional democracy it would be the "fixed star" which this Court defined in the *Barnette Case:*

> "* * * no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein" (319 U. S. 624, 642).

It is this principle which we are asking the Court to vindicate in these cases.

Once we go beyond this principle, this "fixed star", there is no principle on which there is easy agreement. Jus-

tice Edgerton, dissenting, pointed this out in the *Barsky Case* (167 F. (2d) 241, 262). This Court has also said so in the *Schneiderman Case,* 320 U. S. 118, in *Girouard* v. *United States,* 328 U. S. 61, and in other cases.

The history of the Committee demonstrates its inability to define these so-called standards. Time and again, members of the House have asked for definitions but have received none (81 Cong. Rec. 3286 (1937); 89 Cong. Rec. 806 (1943)). The chief counsel of the Committee advised a member of the House that the Committee has adopted no definitions (92 Cong. Rec. A4743 (1946)).

In this context, it is small wonder that the Committee has taken "as its field the whole gamut of American political, social and economic life" in an "almost unlimited variety" of investigations (Note, 47 Columbia Law Review at 418). The Committee has attacked the President of the United States, the Vice-President, and Cabinet members. It has compiled a blacklist of the names of one million "subversive" persons and over 1,000 "subversive" organizations (H. R. Rep. No. 2748, 77th Cong., 2nd Sess., 2, 3 (1943); H. R. Rep. No. 2742, 79th Cong., 2nd Sess., 16 (1947); 89 Cong. Rec. 797 (1943)). It has attacked or investigated or reported on opposition to "the American system of checks and balances", opposition to the Franco government, opposition to General MacArthur, advocacy of a world state, and criticism of members of Congress and of the Committee itself (Note, 47 Columbia Law Review at 422, 423). In fact, a complete analysis of the work of the Committee, its hearings, its reports, its statements, the speeches of its members, would show that it has attempted to label as "subversive" or "un-American" practically every single important political, social or economic idea which is current in America but which the Committee or its members disapprove.

The petitions in these very cases demonstrate the scope of the Committee's activities:

(1) George Marshall (No. 197) is before this Court because he was chairman of the National Federation

for Constitutional Liberties, which distributed literature in support of the right to vote, in support of equal rights to work and to use of public facilities, in defense of Negroes against maltreatment, in defense of the rights of labor, in defense of democracy in education and in the Armed Forces, and material pointing out the danger of native fascism in America (Marshall's Petition, p. 3). The Committee regards this propaganda as "subversive" or "un-American."

(2) Richard Morford (No. 236) is before this Court because he is Executive Director of the National Council of American-Soviet Friendship, Inc., which was organized in 1943, when the United States and the Soviet Union were allied in war, for the following purpose: "To promote better understanding and strengthen friendly relations between the United States and the Soviet Union as essential to the winning of the war, and the establishment of world-wide democracy and enduring peace" (Morford's Petition, p. 2). Its activities and propaganda were all directed to the achievement of this purpose, and have been supported by a large number of notable Americans (id., pp. 2-3). The Committee believes that such propaganda is "subversive" or "un-American."

(3) John Howard Lawson (No. 248) and Dalton Trumbo (No. 249) are before this Court because they are motion picture writers and because the Committee undertook an investigation of the motion picture industry for the purpose of eliminating the type of pictures which the Committee disapproved and encouraging production of the type of pictures which the Committee would approve (Lawson's Brief, p. 61 ff.). The Committee believes that some motion pictures are "subversive" or "un-American", and others are not.

(4) Edward Barsky (No. 766) and others are before this Court because they are chairman and mem-

bers, respectively, of the Executive Board of the Joint Anti-Fascist Refugee Committee, a relief organization licensed by the President's War Relief Board (Barsky's Petition, p. 2). The Committee believes that it is "subversive" or "un-American" to furnish relief to the victims of Franco's fascist repression.

Thus, the five petitions present to the Court as representative a picture of the Committee's notions and activities as it is possible to get from so small a sampling. In these cases, the Committee has acted on the explicit assumption that it is "subversive" or "un-American" to engage in the protection of civil rights and labor's rights and in a struggle to eliminate discrimination against the Negro people; or to attempt to foster friendship and understanding between this country and the Soviet Union; or to make motion pictures on any other terms than the Committee's notions of good and bad; or to furnish food and shelter to the victims of fascist terror and repression. In carrying out these notions, the Committee has here used its customary variety of weapons. It has required the production of financial and other records of the organizations involved; it has required the open confession of political beliefs and affiliations; it has used sensation-seeking publicity, the threat, the blacklist, the awful stigma of disloyalty.

These cases demonstrate that the Committee has applied the Resolution in a manner which violates the constitutional guarantees in shocking fashion, that it has set itself up as the supreme arbiter of what Americans shall and shall not think. No person, no matter how conservative he may believe himself to be, is safe from an inquisition such as this. And since there is no way of telling in advance what the Committee may or may not approve, there is an extensive previous restraint on the freedom to speak, the freedom to assemble, the freedom to associate.

We do not believe that this Court will give its approval to such tyranny.

II

The Committee's use of the blacklist is unconstitutional.

As we have indicated, these cases also illustrate the extent to which the Committee has used the blacklist, a weapon which our entire history has led us to regard as unfair, sinister, and undemocratic. In *Marshall's Case,* the subpoena required the production of the records of the National Federation for Constitutional Liberties relating to the solicitation and disbursement of funds with a list of all contributors. In *Morford's Case,* the subpoena required the production of all books and records showing all the receipts and disbursements by the National Council of American-Soviet Friendship, Inc., and all correspondence and communications for the year 1945. In the *Lawson* and *Trumbo Cases,* the questions required disclosure of political beliefs and affiliations, and the Committee otherwise made it plain that an object of its investigation of the motion picture industry was to establish a blacklist of writers, directors, producers, and actors (Lawson's Petition, p. 69 ff.). In the *Barsky Case,* the subpoenas required the production of all books and records concerning receipts and disbursements; correspondence and communications; and lists of contributors for the years 1944 and 1945.

The requirements here sought to be imposed by the Committee in its subpoenas and in its questions to witnesses violate the Fourth and Fifth Amendments to the Constitution. Since these constitutional issues are fully argued in the briefs supporting the petition, we will not burden the Court with further argument, but we do wish to set forth our views on the pernicious and sinister nature of a government blacklist.

Although the blacklist has been used in other connections, its greatest use in this country has been against militant union members. The use of such blacklists became so wide-

spread at the end of the last century and the beginning of this, that most of the states enacted statutes making blacklisting a crime. Such statutes were held to be constitutional (see, e.g., *Johnson* v. *Oregon Stevedoring Co.,* 128 Ore. 121, 270 Pac. 772). Although the National Labor Relations Act does not specifically deal with blacklisting, this Court has sustained the application of Section 8(3) of the Act to blacklisting (*N.L.R.B.* v. *Fruehauf Trailer Company,* 301 U. S. 51. See also *Mackay Radio & Telegraph Co.,* 1 N.L.R.B. 201.)

The statutory prohibitions against blacklisting are based on the conception that a man should not be deprived of his livelihood because of the exercise by him of rights which he may exercise under the Constitution. A man has the right to join a union and to be active therein and the interference with that right may be prevented constitutionally. (*N.L.R.B.* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1.)

This Court has also recognized this conception in other situations, particularly in legislative attempts to cut off those of whom the legislature disapproves from their specific jobs (*United States* v. *Lovett,* 328 U. S. 303) or from their chosen professions. The *Lovett Case,* and *Cummings* v. *Missouri,* 4 Wall. (U. S.) 277, and *Ex parte Garland,* 4 Wall. (U. S.) 333, hold that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution" (328 U. S. 303, 315-316). In the *Lovett Case,* the Court said that proscription from employment is punishment "of a most severe type", as is the imposition of the stigma of disloyalty (at 316).

In these five cases, like in the *Lovett Case,* we have an open and avowed effort to build up a blacklist, the effect of which would be to make employment impossible for the victims. One of the members of the Committee said during the course of the hearings on the motion picture industry:

"* * * we have the problem of eliminating the Communist element from not only the Hollywood scene but also other scenes in America * * *" (quoted in *Lawson's* Brief, p. 70, n. 3). This is merely one illustration of the Committee's openly stated official objective of driving out of employment, public and private, all persons whom it finds to be "subversive". (9 Hearings before Special Committee to Investigate un-American Activities on H.R. 282, p. 5447 (1939).) And, as we have noted, the Committee has prepared a carefully indexed blacklist of a million "subversive" persons and over 1,000 organizations. In these five cases, the information required by the Committee, particularly in the subpoenas calling for lists of contributors, could serve only to swell this sinister blacklist.

The creation, maintenance, and application of such a blacklist violates not only the Fourth and Fifth Amendments and Article I, Section 10 of the Constitution relating to bills of attainder, but also violates the First Amendment. What more serious interference with the right of free speech can be imagined than the threat that if the right is exercised the speaker faces the loss of employment and denunciation as "subversive". Is this not the same "punishment—of a most severe type" which this Court denounced in the *Lovett Case*? The same conclusion is of course applicable here to the exercise of the other great rights—freedom of press, assembly, and association. Those who write in support of ideas or policies of which the Committee disapproves, those who attend meetings of organizations on the Committee's blacklist, those who join or contribute to such organizations, all such persons are in danger of such retaliation. And the danger is the more sinister and pervasive, the more obviously unconstitutional in that while the idea may not yet have been disapproved by the Committee, it may disapprove the idea tomorrow, while the organization is not yet on the blacklist, the Committee may put it on tomorrow.

Finally, the application of the concept of guilt by association which is at the core of the blacklist weapon as em-

ployed here, in the same way as it permeates the Committee's work as a whole, is particularly abhorrent to our constitutional traditions. The Committee's adoption of this doctrine impairs the exercise by every American of his freedom of association, without which participation in the political life of the country is meaningless and which in turn destroys the First Amendment rights—freedom of speech, press, and assembly.

In the face of this Court's explicit rejection of the doctrine of "guilt by association" (*De Jonge* v. *Oregon,* 299 U. S. 353; *Schneiderman* v. *U. S.,* 320 U. S. 357), the Committee has erected the doctrine into a cardinal principle. The use of the doctrine by the Committee in its blacklist and in all of its other activities leads to far-reaching previous restraints on liberty. Hardy indeed is the American who still dares exercise his right to associate freely. With his job, his future, his reputation, and his self-respect at stake, with the danger to having attached to him the stigma of "disloyalty", with the likelihood that the Committee may unloose upon him its favorite technique of "exposure" (with its accompaniment of klieg lights, television cameras, sensational headlines, and slanted reports), he must think twice and three times before he attends a meeting in protest against discrimination against Negroes or before he contributes a dollar or two to feed a refugee from Franco Spain.

Such an unprecedented application of the doctrine of "guilt by association" has recently been severely condemned by a prominent member of the New York Bar, with a long record of distinguished public service (John Lord O'Brian, "Loyalty Tests and Guilt by Association", 61 Har. L. Rev. 592). His condemnation of the doctrine finds full support in the language and decisions of the Supreme Court:

> "Guilt with us remains individual and personal * * * " (*Kottlakos* v. *U. S.,* 328 U. S. 750, 772).
>
> "Under our traditions beliefs are personal and not a matter of mere association * * * " (*Schneiderman* v. *U. S.,* 320 U. S. 118, 136).

> "The doctrine of personal guilt is one of the fundamental principles of our jurisprudence. It partakes of the very essence of the concept of freedom and due process of law" (Mr. Justice Murphy, concurring in *Bridges* v. *Wixon*, 326 U. S. 135, 163).

And it is worth recalling that in 1920, when as now, political fears and tensions generated repressive measures against freedom of thought and association, Mr. Charles E. Hughes, later the Chief Justice, protesting against the expulsion from the New York Assembly of five duly elected members of the Socialist Party, declared that "it is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts • • • " (*Memorial of the Special Committee Appointed by the Association of the Bar of the City of New York*, 5 N. Y. Legis. Doc. No. 30, 143rd Sess. 4 (1920)).

The Committee's application of the doctrine of "guilt by association" calls for the severest condemnation by this Court. Unless this is done, the exercise of the rights guaranteed by the First Amendment will become so perilous as to endanger the future of self-government in America.

III

CONCLUSION

With all the earnestness at our command, we respectfully urge this Court to grant the petitions herein. The House Committee on Un-American Activities has already done untold injury to our freedoms. Its activities are blatantly violative of the constitutional guarantees. We urge this Court to so declare.

Respectfully submitted,

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